known as the Traction Company, the product of parallels and competitors swallowed whole. It owns the city, is part of the city government, and is stronger than the city government.

The main point of the corporation problem is that corporations tend to become stronger than the government and stronger than the people. Our people have already one such corporation. Do they want another, which shall be seated in the eastern half of the State, with its rival seated in the western half; and, having made the two, would they like the two to combine into one?

IS THE BOUNTY ON SUGAR CONSTITUTIONAL?

By Wm. Draper Lewis, Ph.D.

In the February number of the *Harvard Law Review*, Charles F. Chamberlayne has an article, entitled "The Sugar Bounties."[1] It is a careful and able presentation of the view that the "Sugar Bounty Clause" of the McKinley Tariff Act is unconstitutional.[2] The ground taken by the author is substantially the same as that taken by the counsel for Sternbach & Co., when the case of that firm against the Government, which was supposed by Mr. Chamberlayne to involve the power of Congress to grant bounties, was before the Court. It is argued that it is against the nature of a free government to grant bounties to private persons for entering or laboring in a private employment.

The case of Sternbach *v.* United States has now been decided by the Court,[3] Mr. Justice Harlan expressly refuses to enter on the question of the constitutionality of a bounty.[4] It is difficult, nay almost impossible, to imagine a

[1] Harvard Law Rep., Vol. V, p. 320.

[2] Act of Oct. 1, 1890, C. 1244, Sec. 1, Par. 231, Schedule E.

[3] Reported under the name of Field *v.* Clark, 143 U. S., 649.

[4] Page 695.

case arising, the decision of which would necessarily involve the constitutionality of a bounty given by the Federal Government. But we may be sure that sooner or later a way will be found to legitimately test the correctness of the position assumed by Mr. Chamberlayne. Then, in the words of Mr. Justice HARLAN, "It would be difficult to suggest a question of larger importance, or one the decision of which would be more far-reaching." To say that the *genius* of the institutions of a free people prevents them stimulating, by bounties, particular industries—something all national governments have done, and something which, perhaps, one-half of our people believe to be the correct economic policy to pursue—is one whose importance demands of every citizen the most careful consideration, and requires us to go into the fundamental principles of constitutional law.

All our governments are created by written constitutions. The people are sovereign, but government with us is the creature of the Constitution. No one has placed the light in which we should regard our constitutions, whether State or National, better than Mr. Justice BREWER. He says: "The object of the constitution of a free government is to grant, not to withdraw, power. The habit of regarding the legislature as *inherently omnipotent*, and looking at what express restrictions the constitution has placed upon its action, is dangerous and tends to error. Rather, regarding, first, those essential truths, those axioms of civil and political liberty upon which all free governments are founded; and, secondly, statements of principles in the Bill of Rights, upon which this governmental structure is reared, we may then properly inquire what powers the words of the constitution—the terms of the grant—convey."[1]

All power resides in the people, or, as the political scientists have it, in "the State." Part of this power they

[1] The State *v.* Nemaha Co., 7 Kansas, pp. 554, 555. Diss. opinion of Mr. Justice BREWER. Mr. Justice MILLER, in Loan Asso. *v.* Topeka, 20 Wall., p. 663, says: "The theory of our governments, State and National, is opposed to the deposit of unlimited power anywhere."

have delegated to the government created by the constitution. To interpret the powers granted we need not go back of the constitution. The numerous dicta which speak of the unwritten constitution back of the written, while they indicate a correct point of view, are unfortunate in the choice of words.[1] What is meant is, that the words of the instrument itself, like the words of any other instrument, should be interpreted in the light of the object which the people had in view when they adopted it. If, in the case of a written constitution, the central object is the establishment of a government of a free people—a republican government—the fundamental principles of a free government, the liberty and equality of the citizens is always the undercurrent of thought, in every line, in every word. It is in the light, therefore, of the fundamental principles of human liberty, that we must interpret every power which has been delegated by the people to the government.

This principle, we all must admit, is as applicable to the Federal as to the State governments. The people of this country never intended to create a despotism. There are individual rights that are beyond the control of the government of the United States. Mr. Justice MILLER has truly said: "A government which recognized no such rights, which held the lives, the liberty and the property of its citizens subject at all times to the absolute despotism

[1] Thus Judge BECK, in his concurring opinion in Hanson *v.* Vernon, 27 Iowa, p. 73, says: "There is, as it were, back of the written constitution, an *unwritten constitution*." Yet, in spite of this unfortunate use of words, we believe the expression indicates a sounder conception than that of Mr. Justice CLIFFORD, in his dissenting opinion, in Loan Asso. *v.* Topeka, 20 Wall., p. 669, where he says: "Courts cannot nullify an Act of the State on the vague ground that they think it opposed to a general latent spirit, supposed to pervade or underlie the constitution, where neither the terms nor the implications of the instrument disclose any such restriction." See also the dissent of Judge COLE, in Hanson *v.* Vernon, 27 Iowa, p. 78. No Act of the Legislature can be annulled on vague ground; but the foundation principles of human liberty are not vague, and the structure of all our constitutions shows that the powers granted to government were to be limited by those principles.

and unlimited control of even the most democratic depository of power, is after all but a despotism."[1]

There are, therefore, fundamental rights, which we as individuals have in common with other citizens of this free government. Does the Act of Congress, granting a bounty on the production of sugar, trespass on our rights? It is contended that it does, in that it appropriates money for private purposes. If the appropriation of money to pay sugar bounties is the furtherance of a private purpose, and not public, there is no doubt but that the bounty is unconstitutional. For if there is one proposition more fundamental than another, it is that a free government is established for public and not private ends. An Act, whose primary object is to benefit A, B or C, cannot become law. To multiply authority or quotation on this head would be useless.[2]

The question then is: What is a "public purpose?" The way in which all the cases, which have involved the proper construction of the term, have come before the courts, is where municipalities, under the permission of State legislatures, have subscribed to the stock, or donated money to private companies, or granted money to individuals or firms. In all the cases the courts have universally recognized the fact that an Act, whose primary object was the benefit of A or B or C, is nothing more than an attempt at legislation, futile, because of the want of power granted by the people to the Legislature.

The courts have universally declared that all ordinances of city councils, granting aid to manufacturing companies, or others engaged in private business, are void. Thus,

[1] Loan Asso. *v.* Topeka, 20 Wall, p. 662.

[2] "To lay with one hand the power of government on the property of the citizen, and with the other to bestow it upon favored individuals, to aid private enterprise, and build up private fortunes, is none the less a robbery, because it is done under the forms of law, called 'taxation.'

"No government can tax the whole people for the benefit of a single individual or an enumerated class of individuals." "By taxation," says Chief Justice BLACK, of Pennsylvania, "is meant a certain mode of raising revenue for a public purpose, in which the community that pays it has an interest." Sharpless *v.* Mayor of Philadelphia, 21 Pa., p. 174.

when the town of Jay, in Maine, under permission of the legislature, provided that if a certain private company moved its plant from another town in the State to Jay, the town would lend $10,000 to the company, the Supreme Court of the State held the Ordinance void, as the moving of the company's saw-mill to the town was not, for the inhabitants of Jay, a public purpose.[1] The fact that the town had been authorized to make the loan by the legislature was immaterial; the legislature only being able to grant to the corporation power to pass laws for public purposes pertaining to the town. The fundamental principle of government, that its Acts must be for public purposes and not for private gain, as thus applied to loans to particular companies by municipalities, has been made in every State in the Union, in which the question has arisen, and in the Supreme Court of the United States.[2] Whether the aid has been attempted through loans or through subscriptions to stock, the purpose, the aid of particular persons, being private, the Acts have been declared void.[3]

That there may be a public advantage in the prosperity of A, B or C cannot be denied. But, "the promotion of the interests of individuals, either in respect to property or business, although it may result incidentally in the advancement of the public welfare, is in its essential character a private and not a public object. The incidental advantage to the public, or to the State, which results from the promotion of private interests and the prosperity to private enterprise or business, does not justify their aid by the use of public money."[4] In fact, the conclusion of every court

[1] Allen *v.* Town of Jay, 60 Me., 124.

[2] Weismer *v.* Village of Douglas, 64 N. Y., 91; Commercial Bank of Cleveland *v.* City of Iola, 2 Dil. C. C. Rep., 353; McConnell *v.* Hamm, 16 Kansas, 226; Bissel *v.* City of Kankakee, 64 Ill., 249; English *v.* The People, 96 Ill., 566; Cole *v.* LaGrange, 113 U. S., 1.; Parkensburg *v.* Brown, 106 U. S., 487; Weeks *v.* Milwaukee, 10 Wis., 242; Ohio Valley Iron Works *v.* Moundsville, 11 W. Va., 1.

[3] The C. P. & U. P. P. R. Co. *v.* Smith, 23 Kansas, 745. See also Minn. *v.* Foley, 30 Minn., 350.

[4] Mr. Justice GRAY, in Lowell City *v.* Boston, 111 Mass., p. 461. It is not necessary, however, that the public service should have been requested by the government at the time of their performance (Freeland

and constitutional lawyer may be summarized thus: "*Money cannot be paid directly or indirectly by government to the individual, except in payment for public service, or to further some public purpose; and the establishment of A, B or C in business, or helping A, B or C as individuals to do anything or be anything, is not and cannot be a public purpose.*"

Subscriptions to the stock or bonds, and donations to railroad companies by the municipalities through which they pass, have been upheld, wherever declared valid, on the grounds that though managed by private corporations, their duties were essentially of a public nature, and their every act was subject to the control of the State government, not only by general laws, but by specific regulations.[1] "The company may be private," says Chief Justice BLACK, "but the work they are to do is a public duty."[2] The position taken by those who follow the general trend of authority on this subject is strikingly put by Judge VALENTINE, in the principal Kansas case. He says: "Suppose the State should employ an individual to carry stationery from the depot in North Topeka to the state-house, would the transportation of such property be any the less a public purpose because the person so employed might be a private individual and the wagon and horses with which he might transfer the stationery might be private property? And will it be contended that no taxes could be levied or public funds used to pay for the service of a postmaster and the

v. Hastings, 10 Allen, 570), or that the recipient could have recovered by a suit against the municipal corporation. It is sufficient that a public service has been performed. (Town of Guilfort *v.* Supervisors of Chenango Co., 13 Ill., 143.) See comments of FOLGER, J., on this case, in Weismer *v.* Village of Douglass, 64 N. Y., p. 99. On its correctness rests the constitutionality of all pensions paid to soldiers, or the civil employees of government. See also Blanding *v.* Burr, 13 Cala., 343; Creighton *v.* Board of Supervisors, 42 Cala., 446; Lurton *v.* Ashbury, 41 Cala., 526; but the specific property especially benefited cannot be assessed. See In the matter of Market St., 49 Cala., 546.

[1] For a list of cases up to 1871, in the various State courts, see Leavenworth Co. *v.* Miller, 7 Kas., 503–6, per VALENTINE, J. See also a partial list in Hanson *v.* Vernon, 27 Iowa, p. 81, per COLE, J.

[2] Sharpless *v.* Mayor of Philadelphia, 21 Pa., p. 170.

use of his house and furniture, or to pay for the service of said individual, and for the use of his horse and wagon, simply because the post-office and furniture and horse and wagon are private property?"[1]

This seems to be a complete answer to the argument advanced by Judge DILLON[2] and by Mr. Justice BREWER,[3] and adopted in the Supreme Courts of Iowa,[4] Michigan[5] and Wisconsin,[6] that these Acts aiding railroads, because they appropriate money to private individuals, are unconstitutional. Granting the business of a railroad to be a public purpose, the fact that the State hires private individuals to perform this end is no reason why they should not be paid by the State. Those who support the validity of these donations to railroads cannot but regard a railroad company very much in the light of the clerk of a court, who is paid for the services he renders the public partly by the fees of suitors. The fact that he has the right to certain stated fees does not deprive the State of the right to grant him sums in further payment.

The great difficulty with this view, as applied to railroads, and the reason why such differences of opinion have been held by eminent jurists, lies in the fact that the relation of the State to railroad corporations has never been clearly set forth. It is manifest that if a corporation con-

[1] Leavenworth Co. *v.* Miller, per VALENTINE, J., 7 Kas., p. 526.

[2] In Hanson *v.* Vernon, 27 Iowa, 28, 53.

[3] Dissent in State *v.* Nemaha Co., 7 Kas., p. 563.

[4] Hanson *v.* Vernon, 27 Iowa, 28.

[5] People *v.* The Township Board of Salem. This case over-ruled. Swair *v.* Williams, 2 Mich., 427; 20 Mich., 452.

[6] Whitings *v.* Fond du Lac R. R. Co., 20 Wis., 167. The Supreme Court of the United States refused to follow this construction of the Constitution of Wisconsin, because it was based on general principles of constitutional law and not on the words of the State Constitution (Olcott *v.* The Supervisors, 16 Wall, 678, and Rogers *v.* Burlington, 3 Wall, 654, the Chief Justice, FIELD, MILLER and GRIER, J.J., dissenting); thus following their own opinion and decision that loans by municipalities to railroads are not loans for a private purpose (R. R. Co. *v.* Otoe, 16 Wall, 675, the Chief Justice, MILLER and DAVIS, J.J., dissenting). See also St. Joseph Township *v.* Rogers, 16 Wall, p. 644. The Supreme Court also refused to follow the Michigan case, see Taylor *v.* Ypsilanti, 105 U. S., 60 New Buffalo *v.* Iron Co., *Ibid.*, 73. See Pine Grove *v.* Talcott, 19 Wall, 66

tracted to carry the mails of the United States, the amount which it could charge and every detail of management could be directed by Congress. Such a corporation would be as completely the servant of Congress as any other employee of the government. The validity of grants of public money to pay such services would never for a moment be questioned. But under the law, as laid down by the cases, a railroad corporation is not the absolute servant of the State, in the sense that a letter-carrying corporation would be of the United States. A State can make a contract with a railroad corporation which it cannot break.[1] It can regulate the rates of fare,[2] but this power is no power at all because the regulation must be reasonable.[3] The question, therefore, in the case of railroad grants, is whether a State, through a municipality, can grant money to a quasi-servant over the work of which it has but a limited control. This question, depending as it does on the circumstances of each case, will never be finally determined. The great weight of decisions to-day is in favor of the legality of State loans and payments to railroads; but we are willing to admit that the ultimate determination of the question will not be until the courts declare that railroad companies are solely the servants of the State. But whichever way that question is finally determined, it has manifestly nothing to do with the question of the legality of the bounties.[4] In the railroad

[1] Ruggles *v.* Ill., 108 U. S., 526.

[2] Chicago, Burlington and Quincy R. R. Co. *v.* Iowa, 94 U. S., 135.

[3] Chicago, Milwaukee and St. Paul R. R. Co. *v.* Minn., 134 U. S., 418. But this question is again involved in doubt. (See Budd *v.* New York, 143 U. S., 517.)

[4] Following the principle that a government of a free people can pay out money to a quasi-public servant, the Supreme Court of the United States held that it was within the constitutional power of a State to allow a municipal corporation to donate its bonds to a grist-mill, because all the public had a right to grind flour at such mills (Township of Burlington *v.* Beasley, 94 U. S., 310). Judge PAINE, in his dissent to the principles announced by his Court, in Curtis Admr. *v.* Whipple, 24 Wis., 359, takes the ground that the aid of such things as education is sufficiently a public purpose, to enable the State to make a grant to a definite private school. But the better opinion seems to be that a gift, by government even to a private eleemosynary institution, is only valid where the direction of the charity is under the absolute control of the State, and is open to all the

cases the courts may have gone to the extreme limit in the construction of what is payment to individuals for public service; but it is evident that the payment of money to anyone who raises sugar is not a payment for a public service, and must be held constitutional, if at all, on lines of

public. (Opinion of Judge DILLON, in Hanson *v.* Vernon, 27 Iowa, 57. See also The Trustees of Brooks Acad. *v.* George, 14 W. Va., 411.) Thus a gift of public moneys to a school building, whose trustees, though selected by the town, were limited to certain religious denominations, has been declared unconstitutional (Jenkins *v.* Andover, 103 Mass., 94). See also Curtis *v.* Whipple, 24 Wis., 350, where the town donating the money had no control over the trustees of the school, who, at their discretion, might have excluded all persons of the town from their school. The principle that the State must have the absolute control over the works of the company, to enable it to donate money toward the work, was applied in Coates *v.* Cambell, 37 Minn., 498. The question for decision was the right of a town, under legislative permission, to give its bonds to a corporation for the purpose of aiding the corporation to erect a dam. The Act was declared unconstitutional, on the ground stated by Chief Justice GILFILLAN, that the "water-power must belong to some private person or corporation, and the public has no more right or interest in it, or right in its use, than in any other power owned by a private person or corporation."

There is one feature of public aid to railroad corporations and similar companies, which one can only wonder was ever permitted, and whose support is rather in the accumulation of authorities than in the accumulation of reasons. Whenever municipal aid to railroads has been permitted at all, towns have been allowed to lend their aid by subscribing to the stock of the corporation. (See, for principal case, Sharpless *v.* The Mayor of Philadelphia, 21 Pa., 147.) Permitting a municipal corporation to pay for cleaning a street, or loan money to a company who would undertake to clean the streets, is one thing. It is paying in one form or another for public work; but taking stock and becoming a member of a private corporation, with all the liabilities of a stockholder, is a totally different thing. It is becoming a partner in a business whose object is the making of money. Judge REDFIELD, in the 12th Am. Law Reg. (N. S.), 500, while he admits the propriety of a municipality taxing itself to aid in the construction of a railroad, says: "But the attempt to do this by allowing the municipalities to become members of these private companies, must surely be an anomaly." Whatever may be a public purpose for a municipality, partnership in private corporations is not included in the list. And yet it was held, in Sweet *v.* Hubert, 15 Bart. (N. Y.), 312, that while under the decision of the Court of Appeals, in Bank of Rome *v.* Village of Rome, 18 N. Y., 38, the legislature could authorize a town to subscribe to the stock of a railroad, it could not authorize a town to donate money to a railroad. This, as it seems to us, was a complete reversal of legal principles.

reasoning totally distinct from those which uphold such payments.

It may be perfectly true that a gift of money to A or B or C is not a public purpose, and that the payment of money to an individual or corporation for public services is a public purpose. But when we have said this much we have not said that the only public purpose conceivable is the payment of money for public services.

Now, it may be conceded that a law, to be a law at all, must be, theoretically at least, for the equal benefit of the *whole* people. A law which taxed the inhabitants of one county to pay the debt of a whole State would be unconstitutional, because for the special benefit of the rest of the counties.[1] Just as an attempt of the legislature to raise the public funds from a single individual would be legislative robbery.[2] We see the recognition of this rule in the opinion, which is frequently advanced, that a municipality cannot invest in a railroad corporation, because a railroad benefiting other portions of the State besides the city, the city cannot lend its aid to its support.[3] And, in fact, such legislation can only be supported on the ground that the town has a special interest in the railroad passing through it;[4] just as it has a special interest in and can therefore donate money to a school house erected in its limits, though all the people in the State may theoretically have a right to attend it.[5]

[1] Sharpless *v.* Mayor of Philadelphia, C. J. BLACK, 21 Pa., 168.

[2] *Ibid.*

[3] BECK, J., in Hanson *v.* Vernon, 27 Iowa, p. 77. Opinion of Mr. Binney on the right of Philadelphia to subscribe for the stock of the Penna. R. R.

[4] C. J. BLACK, in Sharpless *v.* Mayor of Philadelphia, 21 Pa., 121. Though one cannot but think that, however sound the principle, the learned Chief Justice expanded its application to its full extent when he sustained the Ordinances of the Councils of Philadelphia, authorizing the Mayor to subscribe for the stock of the Hempfield road, whose eastern terminus was 346 miles west of Philadelphia, simply because the road formed a link in the system of roads leading to the city.

[5] Merrick *v.* Amherst, 12 Allen, 501. (See also Dorgan *v.* City of Boston, 12 Allen, 223.) For the application of the principle that the special interest in a locality in a general public object is sufficient to enable it to carry out that object, see Barrett *v.* Brooks, 21 Iowa, 144; Bell *v.* Foutch, 21 Iowa, 119, where the right of a county to build highways and bridges, to be used by all the people in the State, is sustained.

But though the people of a town or county cannot be made, through their State or municipal government, to alone support an Act which is practically as beneficial to other persons outside as to themselves, there is no reason why all the people in the State should not contribute to a work which is especially beneficial to a particular locality. Practically, no act of government is equally beneficial to each member of the State. To declare that "practical equality of benefits was the test of public purpose" would put an end to all legislation. No law was ever intended to be equally and universally beneficial.[1] The improvement of a road—the making of a park—is more beneficial to those who live in close proximity, than to those who live far off, and, we might add, the benefit to those who do not use the road is of the most infinitesimal and remote kind. Laws granting relief to the poor are only of advantage to those who are poor. Laws relative to those who own real estate require a man to own real estate before he can be benefited by them.[2]

When, therefore, we say that a law must not be for the benefit of a class, or an individual, but for the whole people, have we uttered a fundamental principle of free government or simply a meaningless phrase? I believe we have voiced a truth—one that has a very definite and positive meaning, but not an impossible meaning. It denotes that *one of the criterions of a law being for a public purpose is that every person under the government be allowed, if he fulfilled its conditions, to partake of its benefits.*[3] An Act which erected a school-house in the town of X, and, without providing schools anywhere else in the State, prohibited any but the children of the inhabitants from attending the

[1] This is admitted by Mr. Chamberlayne, p. 324. See also opinion of SLAYTON, A. J., in Norris *v.* City of Waco, 67 Tex., p. 642.

[2] APPLETON, J., in Allen *v.* Inhabitants of Jay, 60 Me., 140, says: "But to constitute a public use . . . it is not essential that all portions of the community should derive equal benefits from the purpose for which property is taken. It may be taken, though only portions of the community are thereby benefited."

[2] It may well be doubted whether the distribution of an equal amount of money to every person is a public purpose. See Hooper *v.* Emery, 14 Me., 375.

school, might well be said to be unconstitutional; but Acts which provide for the erection of a college at the State capital, though undoubtedly more beneficial to the inhabitants of the capital than to those who live in the remote parts of the State, are hailed as a wise expenditure of public money for a beneficial public purpose.

The conditions which must be fulfilled before the benefits of an Act can be enjoyed by an individual, however, must have some relation to the general public purpose of the Act. To spend public money to pave a highway is constitutional, though, practically, only ten persons in the State used the same, but no one would defend an Act to restrict the highway to people having one hundred dollars apiece. On the other hand, to confine its use to wagons would be within the powers of government, because the condition has some relation to the end in view—the proper use of the highway. All people who fulfilled the condition of having wagons could use the highway.

To carry on our investigations a step further: The grant of a sum of money to B, he being very poor, would be unquestionably bad. The general purpose of equalizing the conditions of life may be a public purpose, but the raising of B, as B, from poverty, is not a public purpose. Nevertheless, an Act by which the same individual, B, received the same amount of money, would be constitutional, provided that all poor and destitute persons could receive a like sum. The law would be a general law, equally applicable to all citizens who fulfilled the conditions of being destitute, and B had fulfilled that condition. The point which we learn from this example is this: That such an object as the relief of the destitute, being a public purpose, it could be carried out by paying public money to A, B and C, provided such payments were made under a general law, equally applicable to those who fulfilled its conditions. From this we draw four conclusions:

First.—That because A or B or C is destitute, his raising from distress is not such a public purpose as will support a direct grant of money for his sole and exclusive benefit.

Second.—That the relief of the poor is a public purpose, and, therefore, laws dealing with the poor in general, or with poverty of certain kinds, are laws for a public purpose.

Third.—That it does not interfere with the constitutionality of the laws that they are practically carried into effect by paying money to A, B or C.

Fourth.—That one who desires to prove that sugar bounties are unconstitutional must either prove one of two things: (1) That the stimulation of a particular industry by the Federal Government is not a public purpose; or (2) That, admitting it is a public purpose, it is one of such a totally different nature from the relief of the destitute, that there is an innate reason why it cannot be carried out by any general law, which practically results, as laws for the relief of the poor, by paying money to A, B or C.

To discuss the last question first: There are three cases, Lowell *v.* Boston,[1] Fieldman & Co. *v.* City of Charleston,[2] the State *v.* Osawkee Township,[3] in which the State courts have drawn a distinction between the public purpose of charity and all other public purposes. The first two cases arose out of the great fires in Boston and Charleston respectively. The city councils in both passed ordinances loaning the cities' money to any person whose house was destroyed and who desired to rebuild. The Acts were declared unconstitutional. Without an intimate knowledge of the facts no one would care to criticise the decisions. Everyone must admit that some laws, which on their face pretend to be applicable to all persons in certain conditions, might narrow the conditions to such an extent as in reality to amount to private legislation. To put an extreme case: Suppose the law-making body should pass an Act providing that all persons who had been hurt by the fire which took place on June 1 should have their buildings rebuilt at the expense of the public, and it was known that A's stable was the only building destroyed on that day. No one would defend the constitutionality of such an Act for a moment.

[1] 111 Mass., 545. [2] 23 S. C., 57. [3] 14 Kas., 418.

In the Kansas case Mr. Justice BREWER declared unconstitutional a law of that State which provided that all persons who were unable to buy seeds for planting, on account of a recent failure of crops, could obtain seeds on application to the authorities. The reasoning by which the conclusions were reached in all these cases, however, would apply not only to all laws of a similar kind, but to all laws which attempted to help the persons injured by any disaster, however frightful, which did not leave them absolutely destitute. The reasons advanced seem (except in one instance) to have been put forward without consideration of the point that all persons fulfilling the conditions of the law could receive its benefit, and the fact that even in a charity an Act appropriating money to specific individuals would be invalid. The exception is Mr. Justice GRAY. Speaking of the Boston ordinance, he says: "The general result may indeed be thus stated collectively, as a single object of attainment; but the fund raised is intended to be appropriately distributed, by separate loans to numerous individuals, each one of which will be independent of any relation to the others, or to any general purpose, except that of aiding individual enterprise in matters of private business."[1] Such a method of dividing up legislation would be fatal to all laws. A public park is used by A. If we do not consider the whole purpose of the park, and simply consider his use of it, the Act establishing the park and laying out the grounds becomes a private Act for the benefit of A. If the feature of paying public money to the individual condemns the Act, then all relief of the destitute by the State becomes unconstitutional. Applying the principles recognized in charities to other cases, and we can say, that the general purpose of a law being a *public purpose* for the people, whose government passed the law, and if every citizen who will fulfil its conditions has an equal right to its benefit, the law is not unconstitutional, because it results in paying money to the individual. We fail to see that there is any logical difference between the public purpose of

[1] Lowell *v.* City of Boston, 111 Mass., 472.

charity and any other public purpose. And we cannot but think that empirical distinctions, not based on real differences, make generally bad and always uncertain principles of law.[1]

The bounty now given on sugar by the Federal Government is paid to individuals; but it is not paid to certain definite individuals or to a class, but to all persons in the United States who will grow sugar. It does not discriminate between the different parts of the United States. If I choose to raise sugar under glass in Montana I will receive the bounty. If, therefore, it is a public purpose for the United States Government to increase the amount of production in a particular industry, this law cannot be otherwise than constitutional.

Mr. Justice BREWER'S opinion, in the State *v.* Osabekee Township, sustains the proposition that no government of a free people has any interest in its industries to enable it to stimulate a particular industry. The learned Justice says: "Cold and harsh as the statement may seem, it is nevertheless true that the obligation of the State to help is limited to those who are unable to help themselves."[2] . . . Stated baldly, the position of Mr. Justice BREWER is that no government has any interest in the industries of the country. Economically this may be a true theory, and our country may, in the long run, be happier if the State and National governments raise not so much as a little finger to stimulate industries, or turn industries from one channel to another. According to the Manchester school of economics, this is the best plan for government to pursue. But it is extraordinary to say that a government of one of our States has *no interest* in its industries. Politically we may advocate a passive policy by a State in respect

[1] It has been held that a State can grant a bounty to all who produce salt from waters in the State. See People *v.* State Auditor, 9 Mich., 327; East Saginaw Mfg. Co. *v.* City of East Saginaw, 19 Mich., 259. Though the fact that the State Court which pronounced these decisions has since thrown great doubt on them, modifies their importance. See People *v.* Township Board of Salem, *supra*.

[2] For a clear and forcible statement of his opinion of paternal governments, see his dissent in Budd *v.* New York, 143 U. S., p. 443.

to its industries; but we do so, not because government has no interest in the industries of the country, but because we believe it is best for the industries to leave them alone.

It is a common error with our lawyers—but none the less an error because of its being common—to fasten unconsciously their economic ideas on our constitution. This is but natural when we consider how firmly imbedded were certain economic and social theories concerning the advisability of the non-interference of government in industrial progress. The proposition that government could, by statutory law, aid industry and help to develop the country is, to many, almost inconceivable.[1]

But, in spite of our political and economic beliefs, the real question narrows itself down to this: The stimulation of a particular industry being conceivably within the powers of a government of a free people, is it within the province of our Federal Government, as constituted under the Constitution?[2]

The position taken by Mr. Chamberlayne, in this part of his argument, is unconsciously singularly inconsistent with that taken when he speaks of the impossibility of presuming that a free government could pay the public money for a private purpose. He assumes, what we all must grant, that if the power to pay sugar bounties is not found expressly or impliedly in the Constitution, the Federal Government cannot pay such bounties; but, as we have pointed out, all constitutions must be regarded in the light of the subjects with which they deal. We saw that our constitutions established governments of a free people, and

[1] Judge REDFIELD, in 12 Am. Law Reg., 500, and Judge DILLON, in Hanson *v.* Vernon, 27 Iowa, 59. And yet there is no fundamental reason why it should not be for the advantage of the whole people to stimulate a particular industry, or why government violates individual rights in so doing.

[2] "And in deciding in any given case, whether the object for which taxes are assessed, falls upon one side or the other of the line (public purpose), they (the judges) must be governed mainly by the course and usage of government, the object or purposes which have been considered necessary to the support and for the proper uses of a government, whether State or National or Municipal." Per Mr. Justice MILLER, in Loan Asso. *v.* Topeka, 20 Wall, 664.

we at once perceived that all their provisions must be read in the light of the fundamental rules of human freedom. The Constitution of the United States established the government of the "nation" of the United States. We are not only practically a nation, but constitutionally we have a national government.[1] All powers adequate for the proper conduct of a nation, and the furtherance of national purposes, we must presume to have passed by the Constitution to the government of the United States.[2] Is, then, the improvement of the industrial conditions of the country, taken as a whole, a public purpose for a nation? Such a question has only to be asked to be answered in the affirmative. It may well be argued that the fostering of an industry, by a particular town of the State, may not be a public purpose for the government of the town.[3] Such a government stands in the place of the State, with part of its authority, and a State could not aid the cotton industries in the town B, and not in the town C.[4] But when we come to the National Government, the industrial welfare of the whole people is unquestionably a public purpose. Any other supposition would be absurd. Recognizing this, we must further recognize that government can only aid the industries of the country in one way—by advancing particular industries. The stimulation resulting from a law can never be equally distributed. The levees on the Mis-

[1] See concurring opinion of Mr. Justice BRADLEY, in Legal Tender Cases, 12 Wall, 555.

[2] 12 Wall, 556.

[3] See opinion of APPLETON, C. J., in Brewer Brick Co. *v.* Brewer, 62 Me., p. 74.

[4] To say, however, that a town cannot enter into manufacturing or other business on its own account, as was said by the members of the Maine Supreme Court, 58 Me., Appendix, 590; and in Atty.-Gen. *v.* City of Eau Claire, 37 Wis., 400, seems nothing more than an attempt by the judiciary to fasten on our descendants our own opinion as to the advisability of industries being carried on exclusively by private enterprise. As long as we, as a people, practically hold unanimously to this opinion, such decisions make very little difference. But should any considerable number of our people alter their opinions on this subject, such decisions may lead to what ought to be unnecessary, and, therefore, probably to harmful changes in our Constitution. See on this head opinion of Judges, 150 Mass., 592.

sissippi stimulate the growing of cotton more than the growing of wheat, just as the tariff on cotton goods stimulates their manufacture more than the manufacture of woolens. If the sugar bounties are unconstitutional, simply because they stimulate a particular industry, then every section of the McKinley Bill is unconstitutional.[1] We have no sympathy with the position of one who upholds a protective tariff, because the nominally declared intention of the Tariff Act is to equalize duties while condemning bounties. Many an Act of the State legislatures, nominally to preserve the health of the community, has been declared unconstitutional, because its evident intention was to regulate commerce,[2] and we do not see why the courts cannot apply the same medicine to Congress. If bounty legislation is unconstitutional, so is a tariff. Now, however unwise, as an economist, I may possibly consider the protective tariff, or the bounty system, as a lawyer I must protest against an attempt to make the Judiciary fasten a particular economic doctrine on the people of the United States; especially, when probably the majority of the people distinctly believe in a different economic policy. Such a construction of our Constitution would, in the eyes of the majority, make the Federal Government, as at present constituted, impotent in the face of great industrial needs; and, to borrow a thought from a great publicist—Nothing so surely leads to despotism as the impotency of government.

[1] Mr. Chamberlayne's Article, 343.

[2] Minnesota *v.* Barbier, 136 U. S., 313; Bremen *v.* Rebman, 138 U. S., 78.